



**California
First-Year
Law Students'
Examination**

Essay Questions

June 22, 2004

ESSAY EXAMINATION INSTRUCTIONS

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines which are not pertinent to the solution of the problem.

You should answer the questions according to legal theories and principles of general application.

Question 1

Penelope and her friends went shopping at Deals Department Stores ("Deals"). They entered Deals on the first floor and decided to take the elevator to the third floor. Penelope pressed the button for the elevator. While waiting for it to arrive, Penelope chatted with her friends with her back to the elevator door. When she heard the elevator door open, Penelope, without looking, stepped backward into the elevator opening while continuing to chat with her friends. No elevator car was present, she fell into the shaft, and dropped fifteen feet to the basement floor.

While Penelope suffered only minor physical injuries as a result of her fall, shortly thereafter she suffered an acute psychotic breakdown from which she has not recovered. Penelope's doctors have concluded that the elevator accident aggravated a pre-existing psychological condition which has caused permanent disabilities.

Deals owns the store building and contracts with Reliable Elevator Company ("Reliable") to maintain the elevator. Reliable also manufactured and installed the elevator. This type of accident involving a Reliable elevator has never happened before and there is no evidence of what caused the elevator car to be out of position when the elevator door opened.

1. Under what theory or theories should Penelope bring an action for recovery of damages for her injuries, and against whom? Discuss.
2. What defenses should be raised and what are the likely results? Discuss.

Question 2

GrainCo, a regional grain distributor, sent an offer to sell ten railroad cars of wheat to Processor. The entire offer is contained on a signed form. The front side of the form contains GrainCo's name and address, along with blank spaces for the description of the goods, quantity, price, and delivery date. The blanks were filled in with the desired information. The following statement appears at the bottom of the front side of the form:

"Any contract resulting from acceptance of this offer shall consist only of those terms appearing on the front and reverse sides of this document."

The reverse side of GrainCo's form has six paragraphs. Paragraph five reads as follows:

"Any disputes arising under this agreement shall be resolved through binding arbitration under the rules of the Commercial Arbitration Association."

Processor responded to GrainCo's offer with its standard acceptance form. Processor's form contains its name, address, and company logo embossed at the top of the page with the words "Purchase Order" just below. It has blank spaces for the description of the goods, quantity, price, and delivery date, which Processor filled in with information matching the information on GrainCo's offer. Processor's Purchase Order form has five paragraphs on the back. Paragraph five states:

"The laws of the State of California shall govern this agreement and any claims or controversies arising during performance shall be resolved through proceedings in the courts of the State of California."

Processor's Purchase Order form has a signature line at the bottom of the front side, but due to a clerical error the form sent to GrainCo was not signed. Soon after receiving Processor's Purchase Order form, GrainCo purchased ten railroad cars of wheat from local suppliers for shipment to Processor.

1. Assume that before any wheat is shipped to Processor, the price of wheat falls sharply. If Processor informs GrainCo that it will not accept the ten railroad cars of wheat, will Processor be liable to GrainCo for breach of contract? Discuss.

2. Assume instead that GrainCo delivers the ten railroad cars of wheat to Processor, and Processor pays to GrainCo the full contract price. If Processor has a complaint about the quality of the wheat it received, must Processor submit its claim to the Commercial Arbitration Association? Discuss.

Question 3

After drinking heavily, Art and Ben decided that they would rob the local all-night convenience store. They drove Art's truck to the store, entered, and yelled, "This is a stick-up," while brandishing their unloaded pistols. They discovered that the only persons in the store were Mark, who worked at the store, and Fran, a customer. Art became enraged, since he regarded Fran as his steady girlfriend and was jealous that she had been spending time with Mark. Art announced, "We'll chill these lovers out," and loaded them into the truck. Art drove a very short distance down the dirt road behind the store to a large refrigerator. Art locked Fran and Mark in the refrigerator. Art then returned to the store to pick up Ben, who took \$250 from the cash register on his way out of the store.

The next day, the store manager saw that things were amiss and called police, who rescued Fran and Mark from the refrigerator. Fran suffered no significant injury, but Mark soon developed pneumonia and died as a result of it several weeks later. The coroner's report showed that Mark had an extraordinary susceptibility to pneumonia and that it was triggered by exposure to the combination of viruses and the intense cold of the refrigerator.

1. What criminal charges, if any, should be brought against Art and Ben? Discuss.
2. What defenses, if any, do Art and Ben have to the criminal charges? Discuss.

Question 4

Carol stopped her car at the entrance to her office building to get some papers from her office. She left her car unlocked and left the ignition key under the car's front floor mat while she went briefly into her office.

While Carol was gone, Peter entered Carol's car, found the ignition key where he had seen her leave it, and started the car, intending to drive it to the hospital where his spouse had just been taken for emergency treatment. After Peter had driven the car for about a block, the brakes failed, the car hit a tree, and Peter was injured. In a dazed condition from the accident, Peter entered a nearby public building and pulled the lever of an emergency fire alarm. A city fire truck, responding to the alarm, hit and seriously injured Carol as she was emerging from her office building.

What claims, if any, do Carol and Peter have against each other, and what defenses, if any, may each assert? Discuss.